

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

OTIS J. HILLIARD

Plaintiff,

VS.

TYSON FOODS, INC.

Defendant.

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**CIVIL ACTION NO. 4:10-cv-2388
JURY**

**DEFENDANT TYSON FOODS, INC.'S
DESIGNATION OF EXPERT WITNESSES**

Defendant, Tyson Foods, Inc. ("Tyson") designates the following expert witnesses in accordance with Federal Rule of Civil Procedure 26(a)(2):

RETAINED EXPERTS:

1. Carl L. Benner, P.E.
4001 Austins Estates
Bryan, Texas 77808-7301
(979) 845-6224

Mr. Benner is an electrical engineer associated with Texas A&M University and registered as a Professional Engineer with the State of Texas. A complete copy of the following is attached hereto as ***Exhibit A*** to this designation: (1) Mr. Benner's qualifications, including a list of all publications authored in the previous ten years; (2) a list of all other cases in which, during the previous four years, Mr. Benner has testified as an expert at trial or by deposition; and (3) a statement of the compensation to be paid for the study and testimony in the case. Mr. Benner has reviewed the following documents in the present matter:

- (1) Plaintiff's Original Petition
- (2) Defendant's Original Answer
- (3) Plaintiff's Designation of Expert Witnesses
- (4) Plaintiff's Supplemental Designation of Expert Witnesses
- (5) Plaintiff's Responses to Request for Production, Request for Disclosure, Interrogatories and Request for Inspection
- (6) Plaintiff's First Supplemental Responses to Request for Production
- (7) Plaintiff's Supplementation of Discovery Responses – Neuropsychological Exam

- (8) Defendant's Responses to Request for Production and Interrogatories
- (9) Defendant's Responses to Plaintiff's Second Interrogatories
- (10) Defendant's Responses to Plaintiff's Second Request for Production
- (11) Defendant's Documents Produced (Bates Labeled TYS 001 – TYS 302)
- (12) Color Photographs
- (13) Oral Deposition of Otis Hilliard
- (14) Oral Deposition of Enrique Tamez
- (15) Oral Deposition of Kenneth Jones
- (16) Oral Deposition of Daryl Terry
- (17) Oral Deposition of Joe Ray Cepeda
- (18) Employment Records from Precoat Metals
- (19) Employment Records from Express Professionals
- (20) Employment Records from Grocers Supply Company, Inc.
- (21) Education Records from National Education Center
- (22) Medical Records from East Houston Regional Medical Center
- (23) Medical Records from St. Luke's Episcopal Hospital
- (24) Medical Records from Dr. Maximo Roth
- (25) Medical Records from Key Health Medical Solutions/Select Physical Medicine
- (26) Medical Records from Jeffrey Reuben MD
- (27) Medical Records from Randolph Evans, MD
- (28) Medical Records from Dr. Lorenzo Bortolotti
- (29) Medical Records from Walgreen's Pharmacy
- (30) Medical Records from Neuropsychological Associates/Shawanda Williams-Anderson, Ph.D.

Mr. Benner is expected to testify regarding electrical aspects involved in the incident made the basis of this lawsuit. Specifically, Mr. Benner will testify regarding electricity in general, including its effects on the human body, as well as the operation of the machine involved in the incident, energizing of the machine by Hilliard, and the potential of electrical shock from the machine based upon the events described in the testimony of Hilliard. Tyson offers Mr. Benner for oral deposition at a time mutually convenient to the parties.

2. Francisco I. Perez, Ph.D.
Francisco I. Perez, Ph.D. & Associates, P.C.
6560 Fannin, Suite 1810
Houston, Texas 77030
(713) 790-1225

Dr. Perez is a clinical neuropsychologist. A complete copy of the following is attached hereto as **Exhibit B** to this designation: (1) a complete statement of all opinions Dr. Perez will express as well as the basis and reasons for them; (2) Dr. Perez's qualifications, including a list of all publications authored in the previous ten years; (3) a list of all other cases in which, during the previous four years, Dr. Perez has testified as an expert at trial or by deposition; and (4) a statement of the compensation to be paid for the study and testimony in the case. Dr. Perez has reviewed the following documents in the present matter:

- (1) Plaintiff's Original Petition
- (2) Defendant's Original Answer
- (3) Plaintiff's Designation of Expert Witnesses
- (4) Plaintiff's Supplemental Designation of Expert Witnesses
- (5) Plaintiff's Responses to Request for Production, Request for Disclosure, Interrogatories and Request for Inspection
- (6) Plaintiff's First Supplemental Responses to Request for Production
- (7) Plaintiff's Supplementation of Discovery Responses – Neuropsychological Exam
- (8) Defendant's Responses to Request for Production and Interrogatories
- (9) Defendant's Responses to Plaintiff's Second Interrogatories
- (10) Defendant's Responses to Plaintiff's Second Request for Production
- (11) Defendant's Documents Produced (Bates Labeled TYS 001 – TYS 302)
- (12) Color Photographs
- (13) Oral Deposition of Otis Hilliard
- (14) Oral Deposition of Enrique Tamez
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- (18) Employment Records from Precoat Metals
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- (20) Employment Records from Grocers Supply Company, Inc.
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- (22) Medical Records from East Houston Regional Medical Center
- (23) Medical Records from St. Luke's Episcopal Hospital
- (24) Medical Records from Dr. Maximo Roth
- (25) Medical Records from Key Health Medical Solutions/Select Physical Medicine
- (26) Medical Records from Jeffrey Reuben MD
- (27) Medical Records from Randolph Evans, MD
- (28) Medical Records from Dr. Lorenzo Bortolotti
- (29) Medical Records from Walgreen's Pharmacy
- (30) Medical Records from Neuropsychological Associates/Shawanda Williams-Anderson, Ph.D.

Dr. Perez is expected to testify regarding the current cognitive condition of Hilliard. During his examination, Dr. Perez found Hilliard to exhibit slow motor behavior, diminished and slow speech, and slow performance on most tasks, although these observations appeared to be rather deliberate at times. Although Hilliard cooperated with the examination, Dr. Perez felt that he put forward poor effort. Dr. Perez did review a previous neuropsychological assessment performed by Dr. Williams-Anderson, although he found that Dr. Williams-Anderson did not establish a good baseline and her assessment was rather limited. Dr. Perez noted significant fluctuations in performance, and noticed poor effort and deliberate slow performance on most tasks Hilliard was asked to perform. Overall, the findings were not consistent with the nature of Hilliard's injuries. Dr. Perez saw no evidence that Hilliard sustained a neuropsychological or psychological injury at all in the incident made the basis of this lawsuit. Dr. Perez further believes that motivational factors, including secondary gains, are quite prominent in Hilliard's presentation. He also notes a strong component of symptom magnification.

3. Robert D. Cox, M.A., C.R.C., L.P.C.
17424 West Grand Parkway South, Suite 422
Sugar Land, Texas 77479
(281) 343-0999

Mr. Cox is a Rehabilitation and Career Counselor who serves as President of World of Work, Inc. A complete copy of the following is attached hereto as **Exhibit C** to this designation: (1) Mr. Cox's qualifications, including a list of all publications authored in the previous ten years; and (2) a list of all other cases in which, during the previous four years, Mr. Cox has testified as an expert at trial or by deposition. Mr. Cox charges a flat rate of \$250 per hour for all activities related to his retention in the present lawsuit. Mr. Cox has reviewed the following documents in the present matter:

- (1) Plaintiff's Original Petition
- (2) Defendant's Original Answer
- (3) Plaintiff's Designation of Expert Witnesses
- (4) Plaintiff's Supplemental Designation of Expert Witnesses
- (5) Plaintiff's Responses to Request for Production, Request for Disclosure, Interrogatories and Request for Inspection
- (6) Plaintiff's First Supplemental Responses to Request for Production
- (7) Plaintiff's Supplementation of Discovery Responses – Neuropsychological Exam
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- (26) Medical Records from Jeffrey Reuben MD
- (27) Medical Records from Randolph Evans, MD
- (28) Medical Records from Dr. Lorenzo Bortolotti
- (29) Medical Records from Walgreen's Pharmacy
- (30) Medical Records from Neuropsychological Associates/Shawanda Williams-Anderson, Ph.D.

Mr. Cox is expected to testify regarding Hilliard's current vocational and career options. Specifically, Mr. Cox will testify regarding careers and vocations which would be available to Hilliard based upon his educational background, experience, and limitations, if any. Mr. Cox will further testify regarding the wage earning capacity associated with the careers and vocations available to Hilliard. Tyson offers Mr. Cox for oral deposition at a time mutually convenient to the parties.

NON-RETAINED EXPERTS:

4. Joe Ray Cepeda
c/o Zach T. Mayer
Kane Russell Coleman & Logan PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
(214) 777-4200

Mr. Cepeda is the Complex Safety Manager for Tyson at its Portwall facility in Houston, Texas, where the incident made the basis of this lawsuit occurred. Mr. Cepeda may testify regarding the incident, the reasonableness of safety policies implemented by Tyson, and the effect of Hilliard's failure to follow safety protocols or practices in place. For a more complete statement of the opinions Mr. Cepeda may express as well as the basis and reasons for them, see the Oral Deposition of Joe Ray Cepeda, obtained on August 25, 2011.

1. Merrill P. Anderson, Ph.D.
Atrium 10 Towers
11811 Interstate 10 East, Suite 522
Houston, Texas 77060
(281) 447-7230
2. Lorenzo Bortolotti, M.D.
13125 East Freeway
Houston, Texas 77015
(713) 453-8328
3. Randolph Evans, MD
1200 Binz, Suite 1370
Houston, Texas 77004
(713) 528-0725
4. Andrea Pellegrini, M.D.
505 North Sam Houston Parkway East, Suite 522
Houston, Texas 77060
(786) 683-9811

5. Jeffrey Reuben, M.D.
4126 Southwest Freeway, Suite 700
Houston, Texas 77027
(713) 521-7870
6. Orlando Terneny, MD
2900 Broadway
Houston, Texas 77017
(713) 773-3077
7. Miguel Bastar
Kirk Henderson
City of Houston Fire Department
500 Jefferson, Suite 1500
Houston, Texas 77002
(713) 495-4292
8. Robert S. Case, M.D.
George E. Griffin, M.D.
Denise A. Brown, R.N.
East Houston Medical Center
13111 East Freeway
Houston, Texas 77015
(713) 393-2000
9. Hugo R. Gonzalez, M.D.
Hugo R. Gonzalez & Associates
Industrial and Family Practice Clinic
13125 East Freeway
Houston, Texas 77015
(713) 453-8328
10. Shawanda Williams-Anderson, Ph.D.
Neuropsychological Associates
11250 West Road, Suite I
Houston, Texas 77065
(713) 459-6241
11. Maximo Roth, M.D.
Northshore Occupational Medical Clinic, P.A.
1140 Westmont, Suite 505
Houston, Texas 77015
(713) 453-5454
12. Lily Ann D. Bautista, PT
Lydia V. David, PT

Autumn M. Teesdale, PTA
Select Physical Therapy
15311 Vantage Parkway, Suite 130
Houston, Texas 77032
(281) 442-6861

13. Trien Vu, M.D.
Elan Omessi, M.D.
Abril Padilla, R.N.
St. Luke's Episcopal Hospital
2727 West Holcombe Boulevard
Houston, Texas 77025
(832) 355-7525

These individuals have been identified by Hilliard as the treating medical providers. If called, these individuals would testify regarding their credentials, the medical treatment that was rendered to Hilliard, their findings upon examination of Hilliard, the contents of their examination, as well as any diagnosis or prognosis. The facts known to these experts are contained in their medical records which are already in the possession of the parties.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201
(214) 777-4200 / Fax (214) 777-4299

By: /s/ Zach T. Mayer
Zach T. Mayer
Texas State Bar No. 24013118
zmayer@krcl.com
Brian J. Fisher
Texas State Bar No. 24032178
bfisher@krcl.com

**ATTORNEYS FOR DEFENDANT
TYSON FOODS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2011, a true and correct copy of the foregoing has been forward to all counsel of record, as follows.

VIA ECF AND FACSIMILE

Sarnie A. Randle, Jr.
S.A. Randle & Associates, PC
Chase Bank Building
5177 Richmond Ave., Suite 635
Houston, TX 77056

/s/ Zach T. Mayer

Zach T. Mayer